

LEGISLATIVE DRAFTING

Commonwealth Distance Training Course In Legislative Drafting

Welcome to the Commonwealth Legislative Drafting distance training programme.

Who is this Programme for?

The programme is principally directed to those at the start of a career as a legislative drafter in a Commonwealth jurisdiction.

It has been developed assuming that a prospective trainee is:

- legally qualified and has had at least a short period of experience in some form of legal practice;
- used to working with legal texts written in English and writing legal documents in English;
- working in a common law jurisdiction, or at least one that generally follows the common law approach and traditions in relation to the preparation of legislation;
- a public officer and has recently been, or is likely to be, assigned to legislative drafting, but in either case has little experience of the work.

This programme is designed to help you to understand, acquire and develop the knowledge and skills you need to perform the role of legislative drafter to the best of your ability.

Developing the role of the Legislative Drafter

The work of a legislative drafter is responsible, demanding and complex. We trust that you will discover these materials to be both stimulating and rewarding to work through, and that they will prove to be of assistance to you in your continuing development as an accomplished and effective drafter. The following pages explain why the Course was developed, how it is organised, and how you may work through it and monitor your progress as you proceed.

Preparing to start

This introduction to the programme describes how to use the study materials, but there is a general introduction from the author of these materials on audio cassette, which you may like to listen to it before you start. Play it now or after you have read through this introduction.

Welcome to the Course!

Play the audio cassette labelled Tape One; Side A; Track One,
to hear Professor Keith Patchett introduce this Course.

Why has this Course been developed?

This Course offers a new approach to learning the skills and techniques of legislative drafting. In the past, many trainee drafters have had no choice but to pick these up on the job, in some cases without the supervision or guidance of senior officers. We believe that working with experienced officers on actual drafting tasks is likely to be the most successful method of learning. But this is possible in a very few jurisdictions, where experienced drafters are available to provide the quality and continuity of supervision and the time that is needed.

But in many Commonwealth countries, such facilities are not available. Increasingly, they have looked to formal courses to provide trainees with a systematic and structured training programme on the basics of sound drafting. Such courses are well suited to preparing the ground for the responsibilities that drafting entails.

This Course aims to take this progress a step further.

Many new drafters are unable to take part in training courses, which are usually available only overseas, have a limited number of places and are expensive. The Commonwealth Secretariat and the Commonwealth of Learning initiated this Distance Training Course to enable trainees to learn and to practise the basics of legislative drafting in independent, individual study in their own jurisdiction. At the same time, it is intended to be used also by institutions intending to provide training in legislative drafting which are needing suitable training materials.

What does the Course aim to achieve?

This Course is designed to enable you as a 'trainee' to learn and develop drafting skills and to become familiar with techniques and practices typical in Commonwealth-style drafting. At specific intervals throughout the Course, you will be asked to submit a number of drafting projects for external review and advice from an experienced drafter. This will provide you with direct feedback and should enable you to learn from your efforts (and mistakes) and to help assess your progress.

The Course should not be seen as a substitute for experience; it cannot make you into a seasoned drafter. As in most kinds of legal practice, skills, techniques, know-how and general facility in the work develop by practising them in an actual working environment. This Course is intended to lay the foundations upon which new drafters can build their subsequent experience more securely. It aims to provide a thorough introduction to the basics of sound drafting practice, enabling a trainee to undertake drafting duties with greater confidence and to assume significant responsibilities sooner. It provides the beginnings for becoming a good drafter. But at its end, there will still be much to learn, especially from those already established in the field.

A Training Programme and a Reference Work

The modules presented here are assembled in the order in which they might appear in a text on drafting, rather than as a part of a distance training course. We suggest below a different order in which they are best studied. If that order is adopted, the modules can be reassembled for that purpose. When you have completed the Course, they may be re-sequenced to form a unique reference work, containing information from your own jurisdiction that you will be asked to collect as part of the programme activities. A table of contents and an index are provided, which may be added to facilitate reference.

What does the programme consist of?

The Course has six components, as follows:

1. **Course Text** - start your course of study here...
 2. **Exercise Book** - contains exercises referred to in the *Course Text*
 3. **Exercise Book (Answers)** - answers for the exercises (self checking)
 4. **Drafting Projects Book** - contains projects referred to in the *Course Text* (which may be supplied individually)
 5. **Drafting Projects Book (Suggested Answers)** - contains suggested drafts of the Projects and explanatory notes (which will be supplied after the relevant Project has been completed)
 6. **Materials Book** - a collection of materials, which you can add to
- + Audio Cassettes (3)

A text book on legislative drafting is not provided, but we recommend:

GC Thornton, **Legislative Drafting** (4th ed, 1996, Butterworths, London) - you should find this in your Chambers library.

What is on the Audio Cassettes?

This programme is supported by three audio cassettes which are referred to by tape number, side and track, at various intervals during the Course. Most of these commentaries are to be used for review with the suggested answers provided for the Drafting Projects. The full contents are as follows:

TAPE ONE

Side A	- Track 1: Welcome to the Course	19'49"
	- Track 2: Introduction to the Drafting Projects	17'58"
Side B	- Track 1: Drafting Project 1	21'13"

TAPE TWO

Side A	- Track 1: Drafting Project 6	23'28"
Side B	- Track 1: Module 1B, Section 2 (Analysing Instructions)	14'43"
	- Track 2: Drafting Project 12	25'23"

TAPE THREE

Side A	- Track 1: Drafting Project 14	28'13"
Side B	- Track 1: Drafting Project 17 (part 1)	17'22"
	- Track 2: Drafting Project 17 (part 2)	11'57"
	- Track 3: Drafting Project 18	12'08"

Note: When you have finished listening to a track stop the tape, and only continue 'playing' on to the next track (which you will find 10 seconds later) when you are ready to listen to it. This will save time searching for individual tracks later.

What is the order of the Modules?

The Modules in the Course Text are set out in the order which they might appear in a text on drafting. They begin with matters we think that you need to understand to get the most out of the subsequent materials (**Module 1A - Back to basics**). After this general introduction, we deal with the system of legislative drafting and your responsibilities as a Legislative Counsel and how they may be fulfilled (**Module 1B - Getting going**). Related to this are the constraints imposed on legislative drafters by practices arising from the way legislation is interpreted and in particular from your Interpretation statute and by the Constitution, notably the Fundamental Freedoms provisions (**Module 2 - Working within limits**). These Modules contain a good deal of descriptive matter, though they ask you to find out about practice and procedure in your system. They are not principally concerned with composing legislative provisions.

We deal with drafting practices and techniques in the Modules that follow. We start with the basic task of how to write legislative sentences to create particular legal rules (legislative syntax) and the pitfalls that you should avoid (**Module 3A - Making the right expression**). As with any technical skill, there are better or worse ways of carrying out this activity. So we consider how you can develop an effective style and sound writing practices (**Module 3B - Putting on the style**).

Legislation is more than a set of random legislative sentences. The client's requirements must be converted into a complete instrument that is effectively organised and structured in accordance with the practice that is conventional in your jurisdiction. In **Module 4 - Getting organised**, we look at the tasks of designing and structuring legislative instruments. In **Module 5 (Topping and Tailing)**, we look in detail at technical features of legislation that are typically covered in preliminary and final provisions.

The last Module (**Module 6 - Particular cases**) covers particular types of legislative provisions that are typical in Commonwealth legislation (compliance provisions and subsidiary legislation).

How should you study this material?

At the beginning of each Module and of each of its Sections, you will find a Preview page. This indicates:

- the Objectives that you should be aiming for in your study in that Module or Section;
- the matters under study and the principal questions that are dealt with;
- any specific advice on how you may study that particular Module or Section.

Always start work on a Module by reading the relevant Preview. Suggestions are made there about the order in which its Sections may be tackled. You will also find a clear statement when it is recommended that specified features should be completed before others are attempted.

You may wish to experiment with different approaches to the materials, in order to suit your own requirements. For example, in some instances, you may wish to read quickly through a Section before settling to the Activities and Exercises set in it. Alternatively, you may prefer to tackle those as you meet them.

However, try to plan your work to complete a Section or a distinct part of a Section during a study session. The materials contain convenient break-points, which you should establish before you start a session. By setting yourself a suitable break-point, you set a goal for the session, as well as provide a convenient point to stop.

The Course is designed to allow individual and independent study. When you are working in that way:

- plan your own working sessions;
- complete the work according to your planned timetable.

It is intended that you set your own pace to meet your own learning needs.

Planning your study

Work on this programme will require sustained study. During study sessions, aim to work for periods of around an hour at a time, with a break before you start again. The actual length of the session should be governed, as far as possible, by the nature of the study on which you are currently engaged. As mentioned earlier, aim to finish a study session at a natural break-point in the text, which you should establish before you start the session.

Distance training is based on the assumption that trainees will organise their study in the way that best meets their individual circumstances.

How does the programme work?

The Course puts considerable emphasis upon *doing* tasks that confirm and extend understanding of the subject and contribute to legislative writing capabilities. This feature is found throughout the Modules. The sequence of materials is designed to enable you systematically to reinforce and build upon what you learned in an earlier part by your studies. Bear this in mind when you are judging your progress.

In studying this Course, you will be expected to do the following:

- **to work through the study materials in the Course Text**
- **to undertake specified Activities**
- **to undertake specific Exercises**
- **to undertake Drafting Projects.**

1) Course text

These materials take you through the study topics, drawing out the legal considerations that are important to the drafter and emphasising the drafting implications of the particular matter under study. You will be asked, from time to time, to consider other materials and legislative precedents in support of the text. These are contained in the first section of the **Materials Book**.

The text also contains numerous illustrations of the points under consideration. These are set out in Example Boxes:

Example Box 1

25. A citizen of Utopia employed in the service of the Republic who, when acting or purporting to act in the course of that employment outside Utopia, does an act which would constitute an offence if done within Utopia, commits that offence.

You will note that this Course uses a distinctive font and box shading for quoted examples of legislative text.

These merit close attention. Make sure in each case that you understand how the example confirms the practice described in the Course Text.

2) Activities

These enable you to follow up points in the Course Text and the source materials, in particular by finding out local practice on the topic under consideration, or by collecting local statutory precedents that illustrate that practice. These should be kept in the folders in the last part of the **Materials Book**.

The activities are set at intervals throughout each Module. They appear in plain Activity Boxes that contain space for you to respond or to make notes, in the following way:

Activity Box 1

If your Interpretation Act has an equivalent definition of “person”, confirm its contents by copying it in the space provided.

3) Exercises

The exercises are set at regular intervals throughout the Course Text. They provide an opportunity to test that you have thoroughly understood the topic under consideration.

Exercises are indicated as shown below:

**COMPLETE EXERCISE BOX 7 AND THEN COMPARE
YOUR ANSWER WITH ANSWER BOX 7**

The exercises themselves are located in plain Exercise Boxes in the **Exercise Book** under the appropriate Module and Section headings. Enter your answer in the space provided in the Box. For example:

Exercise Box 7

Redraft the following section to remove or replace superfluous words or antiquated expressions.

Any person who makes any false statement in an application for a licence shall be guilty of an offence and liable, on conviction by a court of competent jurisdiction, to imprisonment for a term not exceeding three months, or to a fine not exceeding two thousand dollars, or to both such fine and such imprisonment.

Once you have completed the exercise, assess your answer by comparing it with that shown in the corresponding shaded Answer Box in the **Exercise Book (Answers)**.

An Answer Box takes the following form:

Answer Box 7

A person who makes a false statement in the application for the licence *commits* an offence and *is* liable to imprisonment *for* 3 months or to a fine *of* \$2000, *or to both*.

This redraft simplifies the original by using the present tense for the verbs and numerals instead of words for the numbers and by eliminating expressions that perform no useful function.

The exercises are short and do not involve extensive work. It is well worth completing them carefully. They help confirm what you have been reading. When comparing your answer with that provided, take a little time to work out a point on which you find a significant difference.

4) Drafting Projects

The Projects are more substantial drafting exercises which you will be asked to complete at the end of a Module or Section. They provide an opportunity for you to try out the knowledge and skills that you should have acquired at that stage.

You will be directed to these, as appropriate, in the yellow *Review* pages which are located at the end of each Section. The Projects themselves are located in the **Drafting Projects Book** and are numbered in sequence. They may consist of more than one part. In eight cases, alternate Projects are supplied. Your training supervisor will indicate which of the alternates is to be undertaken.

An oral introduction to working on these is on an audio cassette (Tape One; Side A; Track Two). Listen to this before undertaking the first Drafting Project.

At the completion of each Project, you will be asked to compare your work with the relevant Suggested Answer, which will be supplied to you at that time. This includes notes

on the principal drafting points which we expect that you will have dealt with. Store these Answers in the **Drafting Projects Book (Suggested Answers)**.

For some Projects, the written notes are supplemented by spoken comments on the audio cassettes. You will be directed to listen to these at the appropriate time.

Make time to study the draft in the Suggested Answer and the explanatory notes carefully. Having worked on the Project and wrestled with the problems involved, you can learn a great deal from the Answer about the way such problems might be approached, as well as assessing the effectiveness of your own approach in comparison.

How long will the work take?

The speed at which you complete the Course depends upon many factors, apart from any problems occasioned by the Course content, for example:

- the time available for study
- your familiarity with the subject-matter;
- your personal working speed;
- the environment in which you are working;
- the length of each study session;
- your commitment and concentration.

It is likely that your rate of progress will vary considerably during the course of the programme. We suggest that you work out a formal timetable. You will find it a helpful way to keep track of your own progress. By keeping such a record, you can establish how much you have done and have to do and the length of time required.

Depending on the time you can set aside, study of the Course may take several weeks or several months to complete. Begin by setting yourself targets to achieve and plan to set aside a regular amount of time in order to do so. Review your progress from time to time and amend your targets if necessary.

How do you monitor your progress?

You will want to know, as you work through the Course, whether you are making satisfactory progress. There are two principal ways in which you can do this:

- **the Drafting Projects**

These are set at the end of a distinct area of study (Module or Section). They are there to enable you to put into practice the main features of what you have been learning. You should be able to assess your progress by:

- how readily you were able to deal with the issues raised, and in particular whether you have been obliged refer back a great deal to the Course materials for guidance;
- comparing your draft with the Suggested Answer to ascertain whether you have dealt with the issues covered by it and whether you have avoided drafting flaws.

The Notes that go with the Suggested Answer and the commentaries on the audio cassette are intended to draw your attention to the matters that are likely to have presented difficulties. If you have resolved those on the lines suggested, without obvious drafting errors, then you can feel that you have made sound progress.

Do not expect to match the Answer in every respect. It is provided to enable you to discover your drafting errors, and so to learn from them.

- **Review pages**

At the end of each Section, you will find a Review of what was contained in that Section, of the objectives when studying it and a repeat of the questions that you will have just dealt with. The Review is a device for reminding yourself of the work you have done, including any Project, to find out whether there are any matters on which you still feel unsure. If that happens, we suggest that you re-work the parts of the Course that touch upon those matters, before you go to any later part of the Course. This is a necessary device in distance training programmes.

The Course is founded on the principle of building blocks. If you are not confident about any segment, you may find that this holds you back at a later stage. At the same time, you must expect to find that many of the finer details only stay with you with practice, which will be provided in the course of working on subsequent Modules.

In assessing your progress, you must be wholly honest with yourself. Be positive in acknowledging your mistakes. How otherwise will you avoid them in future?

In what order should you study the Modules?

The order in which the Modules appear in their binders may be a logical way to organise the material for purposes of reference, but we believe that you will not find it the most effective way to study it. From our experience, we think that you will want to start writing legislative sentences as soon as possible. So we recommend working with **Module 3A**, on legislative expression, immediately you have completed the introduction in **Module 1A**, and before you turn to **Modules 1B** and **2**.

However, if any feature in those Modules interests you or, in your view, may be helpful, read the appropriate section through fairly quickly, leaving the detailed work for later.

The suggested Order of Study is set out diagrammatically on pages 11 to 13 of this Introduction.

The diagram also indicates when the Drafting Projects might best be undertaken. In a number of cases also indicated in the diagram, alternative Projects are available. You will be advised when one of these should be tackled rather than the original.

These Projects are designed to develop your experience in a systematic way. To begin the first of those, you need to have worked with the Modules on legislative expression. The later ones assume that you have acquired the basics with which the earlier ones are concerned.

If you are to absorb the lessons they teach, undertake them at regular intervals throughout the Course, as advised in the Review sheets, but only after you have completed the particular parts of the Course with which they are linked. The work on the Projects aims to reinforce the knowledge you gain from those parts. At the same time, work on some parts will be easier if you have completed certain Projects first.

Accordingly, the diagram that follows suggests an order in which the Modules may be studied and the most appropriate points at which to undertake the Drafting Projects. But as we suggested earlier, do not hesitate to adopt a different order or to have a preliminary look at a later Module if you consider that will make your study easier. But our advice is:

- follow the suggested order of the Drafting Projects; we have put them in that order for good reasons. Your study may be made more difficult if you do not complete them in the order we suggest;
- take on a Drafting Project only after you have *completed* your study of the parts of the Course which precede it on the diagram;
- move to full study of the next Module only after you have completed the Drafting Projects that precede it. You will find the task of completing the Projects becomes increasingly awesome if you stock-pile them.

Order of Study

Part 1

1A: Back to basics	1. What's it all about?	→	Project 1
	2. What is legislation?		
	3. Why do we draft as we do?		
	4. How important is grammar?		
3A: Making the right expression	1. How do we begin to compose legislative sentences?	→	Project 2
	2. How should we express legislative sentences?	→ →	Project 3 Project 4
2: Working within limits	1. How do we work with the rules of interpretation?	→	Project 5
	2. How do we work under the Interpretation Act?		
3A: Making the right expression	3. How do we punctuate legislation?	→	Project 6
	4. What can go wrong in legislative expression?		
1B: Getting going	1. What are the stages in the preparation of legislation?	→ → →	Project 7 Project 8 Project 9*
	2. What do we do with instructions?		
3B: Putting on the style	1. How can we develop an effective legislative style?		Project 10* Project 11
End of Part 1		→	Project 12*

* Alternative Projects available

Part 2

2: Working within limits	3. How do we work under the Constitution?	
	4. How do we work with Fundamental Freedoms provisions?	→ Project 13 → Project 14
4: Getting organised	1. How should we structure legislation?	
	2. How might we design a legislative plan?	→ Project 15* → Project 16*
5A: Topping	1. What do we include in preliminary provisions?	
	2. How do we draft titles, preambles and words of enactment?	
	3. How do we draft commencement and duration provisions?	
	4. How do we draft interpretation provisions?	- Project 17*
	5. How should we use purpose clauses?	
	6. When should we use application provisions?	
5B: and tailing	1. What do we include in final provisions?	
	2. How do we delegate powers to legislate?	- Project 22, Pt. 1
	3. How should we repeal and amend legislation?	Project 20
	4. When do we need saving and transitional provisions?	- Project 18*
	5. How do we draft Schedules?	
End of Module 5		→ Project 19

* Alternative Projects available

6: Particular cases	1. How do we draft compliance provisions?	→ Project 21*
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	2. How do we draft subsidiary legislation?	→	Project 22, Pt. 2 Project 23
	End of part 2	→	Project 24

* Alternative Projects available

How should you begin your study?

If you have not already done so, listen to the first track of the audio cassette. This contains a spoken welcome to the Course. Some points dealt with in this Introduction are mentioned in it, but it aims to put the Course in its wider context of the demanding, but vitally important, work of legislative drafting. After you have read this Introduction and listened to the cassette, turn to the Course Text, and start work by reading the first Preview pages.

**START WORK
BY
READING THE PREVIEWS TO
MODULE 1 AND MODULE 1A, SECTION 1**